IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 34861 of 2004(A)

OS.5/1998 of MUNI-MAGI.COURT,MANNARKAD

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PETITIONER:

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1. KALIKUTTY AMMAL, W/O. BALATHARAKAN,
   KODIKANNATH HOUSE, EDATHANATTUKARA,
   VATTAMANNAPURAM P.O., PALAKKAD DISTRICT.

2. K. MOHANKANNAN, S/O. KALIKUTTY AMMAL,
   KODIKANNATH HOUSE, EDATHANATTUKARA,
   VATTAMANNAPURAM P.O., PALAKKAD DISTRICT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.P.NAIJAL KUMAR

RESPONDENTS:

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1. C.T. THANKAM, AGED ABOUT 33,
   D/O. APPUTHARAKAN, AYINIKODE,
   EDATHANATTUKARA AMSOM DESOM, MANNARKKAD TALUK.

2. MANIKKI AMMAL, AGED ABOUT 65,
   W/O. THUPROTTIL APPUNNI THARAKAN,
   AYINIKODE, EDATHANATTUKARA AMSOM DESOM,
   MANNARKKAD TALUK.

3. APPU, AGED ABOUT 30, S/O. MANIKKI AMMAL,
   AYINIKODE, EDATHANATTUKARA AMSOM DESOM,
   MANNARKKAD TALUK.

4. LEELA, AGED ABOUT 35,
   D/O. MANIKKI AMMAL, AYINIKODE,
   EDATHANATTUKARA AMSOM DESOM, MANNARKKAD TALUK.

5. VIJAYAKUMARI, AGED ABOUT 28,
   D/O. MANIKKI AMMAL, AYINIKODE,
   EDATHANATTUKARA AMSOM DESOM,

MANNARKKAD TALUK.

BY ADV. SRI.K.V.SOHAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24 /1 /2007 , THE COURT ON 24/01/2007 DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of title deed No.469/55 dt. 22.3.55.

Ext.P2:- True copy of the report submitted by the Advocate Commissioner dt. 27.8.02.

Ext.P3:- True copy of report along with plan submitted by the Advocate Commissioner dated 27.8.02.

Ext.P4:- True copy of I.A.863/2002 dated 21.10.02.

Ext.P5:- True copy of written statement filed by the 1st respondent dt.6.2.2000

Ext.P6:- True copy of order dated 28.9.04 in I.A.863/2002

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.34861 OF 2004

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Dated this the 24th day of January 2007

JUDGMENT

Petitioners are plaintiffs and respondents defendants in O.S.5/98 on the file of Munsiff Court, Mannarkkad. Suit was filed for recovery of possession of plaint 'B' and 'C' schedule properties on the strength of their title. A Commission was appointed. The Commissioner submitted report and plan. Petitioners filed I.A.863/02 an application under Order XXVI Rule 10 to set aside the report and plan contending that Commissioner has not properly demarcated the properties and the measurement of property excluding north eastern triangular portion is not correct and the description 'C' schedule and the way on the western side runs throughout, is not correct. Learned Munsiff under Ext.P6 order dismissed the application. This petition is filed under Article 227 of the Constitution of India

challenging Ext.P6 order.

2. Learned senior counsel appearing for petitioners and learned counsel appearing for respondents were heard.

3. Learned Senior counsel Sri.P.N.K.Achan appearing for petitioners, pointed out that though learned Munsiff found that there is no ground to set aside the report, it was found that survey number of the north eastern triangular portion of the property and water channel and location of the pond are not shown. It was observed that petitioners can take steps for remission of report, if required and in such circumstance, learned Munsiff instead of dismissing application should have remitted the report back to the Commissioner. There is force in the submission of the learned Senior counsel. Instead of dismissing the application and directing parties to file a fresh application and thereby protracting the trial, learned Munsiff should have remitted the report back to the Commissioner with a direction

to submit a further report.

Writ Petition is allowed. Ext.P6 order is quashed. I.A.863/02 is partly allowed. The report and plan submitted by the Commissioner is remitted back to the Commissioner, to submit a further report, in the light of the objections raised by petitioners. Commissioner shall also furnish survey number of north eastern triangular portion of the property and also mark the channel and the location of the pond in the plan.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006